REMARKS/ARGUMENTS

1. Remarks on the Supplemental Information Disclosure Statement

Applicant submits herein the recently granted German patent No. DE 102 56 585 B3, to which the instant application claims the priority. The allowed claims and Abstract are in English.

2. Remarks on the Amendments

The specification has been amended to correct an error of duplicated numbering.

Claims 1-10 have been canceled, without prejudice.

New Claims 11-21 have been added, which correspond to the canceled Claims 1-10, respectively.

Antecedent basis for the new claims can be found in claims and the specification as filed. More specifically, antecedent basis Claim 11 can be found on page 4, line 31 to page 5, line 4; page 6, lines 13-20 and Figs. 1 and 2 of the specification as filed.

Applicant respectfully submits no new matter has been introduced by the amendments.

3. Response to Claim Objections of Claims 1-10

Claims 1-10 have been canceled. In the new claims, the term "characterized in that" has been eliminated to obviate the objection.

4. Response to the Rejection of Claims 1, 3 and 4 Based Upon 35 U.S.C. §103(a)

Claims 1, 3 and 4 have been canceled. New Claims 11, 13 and 14 correspond to the canceled Claims 1, 3 and 4, respectively, and presumably stand rejected under

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35 USC §103(a) as being unpatentable over Howell (US Patent No. 1,243,605) in view of Miller (4,124,016). This rejection is respectfully traversed by the amendment.

Claim 11 is an independent claim, and Claims 13-14 are dependent claims of Claim 11.

A determination under 25 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and prior art; and (4) the objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175, F.3d 994, 1000, 50 USPQ 2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

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The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of the establishing prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the application. In *re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

Applicant submits that nothing in the art of record teaches or suggests the subject matter positively recited in Claim 11. More specifically, Applicant's claimed wood burning oven defined by Claim 11 includes pivotable baking-chamber flaps located on both sides of the baking chambers, enabling closing off each of the baking chambers from flue gases; and multiple pivotable flue-gas-duct flaps on two side walls of the oven, and being positioned alternately between the two side walls, and located between two adjacent baking chambers, thereby forming a meandering flue-gas guidance along the baking chambers from one side to another side of the two side walls when the baking-chamber flaps and the flue-gas-duct flaps are closed.

Howell fails to teach the above recited structural features of Applicant's claimed wood burning oven, as well as the functions provided by these structural features. More specifically, Howell fails to teach pivotable baking-chamber flaps located on both sides of said baking chambers. Furthermore, Howell fails to teach multiple pivotable flue-gas-duct flaps on two side walls of the oven and being positioned alternately between the two side walls, and located between two adjacent baking chambers, thereby forming a meandering flue-gas guidance along the baking chambers from one side to another side of the two side walls when the baking-chamber flaps and the flue-gas-duct flaps are closed.

Applicant respectfully points out that Howell teaches away from Applicant's claimed oven.

More specifically, Howell teaches three chambers disposed one on top of the other, each chamber having a dome (33) at the center top, formed with a series of openings (34), and plates (35) disposed between the chambers and casing, which

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cover the openings (36) between the bottom, side and end walls of the chambers. This structure directs the heat through openings (36) in the bottom of the lowest chamber, passing through the opening in the dome of the chamber, then directed again by the plate (35) to the bottom of the middle chamber, passing through the dome to the upper chamber (page 2, line 93 to page 3, line 12 of the reference). Thus, Howell's oven structure guides the heat through the interior of the chamber, more specifically, from the bottom to the top center of the chamber.

Therefore, Howell's chambers are a part of the pathway of the heat flow and they can not be closed from the flue gas, or heat flow. Furthermore, Howell's oven structure does not allow Applicant's claimed meandering flue-gas guidance from one side to another side of said two side walls along the baking chambers.

Howell's defects are not overcome by Miller.

Miller teaches an oven having chambers that have a first series of slits (8) permanently opened, and second series of slits (15) which can be closed by swivel brackets (16). Miller specifically teaches that the slits (15) may be selectively open or closed depending on the need, however, the slits (8) are always open for the hot air during baking (Column 3, lines 63-66 of the reference).

Therefore, neither reference teaches Applicant claimed oven wherein the chambers can be closed by the baking-chamber flaps from the flue gas.

More importantly, neither reference teaches Applicant's claimed pivotable flue-gas-duct flaps disposed alternately between the two side walls, which provides a meandering flue-gas guidance from one side to another side of the two side walls around the baking chambers when the baking-chamber flaps and the flue-gas-duct flaps are closed.

Therefore, based on the prior art's opposite teachings, one skilled in the art would not be motivated to combine the two references, as suggested by the Examiner, to obtain Applicant's claimed oven structure, and function.

Moreover, if one combines Miller's swivel brackets with Howell's chamber, in the manner suggested by the Examiner, Howell's oven would no longer be functional, because, as discussed above, Howell's chambers are part of the pathway for the heat flow.

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Therefore, Applicant maintains that Applicant's claimed invention defined by Claim 11 is not obvious in view of the art of record.

With regard to Claims 13-14, as described above, these claims are dependent upon independent Claim 11. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 1 is unobvious in view of the prior art of record, as such Claims 13-14 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 11, 13 and 14 based upon 35 U.S.C. §103(a).

5. Response to the Rejections of Claims 1, 2 and 5-7 Based Upon 35 U.S.C. §103(a)

Claims 1, 2 and 5-7 have been canceled. New Claims 11, 12 and 15-17 correspond to the canceled Claims 1, 2 and 5-7, respectively, and presumably stand rejected under 35 USC §103(a) as being unpatentable over Stich (DE 40 10 203) in view of Miller (US Patent No. (4,124,016). This rejection is respectfully traversed by the amendment.

The applicable case law for a rejection under 35 U.S.C. §103 (a) has been discussed above in the response to the rejection of Claims 1, 3 and 4 under 35 U.S.C. §103 (a). In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

Applicant's claimed invention defined by Claim 11 has been discussed above.

Applicant submits that nothing in the Stich teaches or suggests the subject matters positively recited in Claims 11. More specifically, Stich fails to teach pivotable baking-chamber flaps located on both sides of said baking chambers, which enables closing off each of the baking chambers from flue gases. Furthermore, Stich fails to teach multiple pivotable flue-gas-duct flaps on two side walls of the oven, positioned alternately between the two side walls and located between two adjacent baking chambers, thereby forming a meandering flue-gas guidance along the baking chambers from one side to another side of the two side walls when the baking-

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chamber flaps and the flue-gas-duct flaps are closed.

Miller's teaching has been discussed above, which does not overcome Stich's defects.

Since neither reference teaches Applicant's claimed oven structure and the function provided by the structural features, one skilled in the art would not be motivated to combine the references as suggested by the Examiner to obtain Applicant's claimed invention.

Therefore, Applicant maintains that Applicant's claimed invention defined by Claim 11 is not obvious in view of the art of the record.

With regard to Claims 12 and 15-17, as described above, these claims are dependent upon independent Claim 11. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 11 is unobvious in view of the prior art of record, as such Claims 12 and 15-17 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 11, 12 and 15-17 based upon 35 U.S.C. §103(a).

6. Response to the Rejections of Claims 8, 9 and 10 Based Upon 35 U.S.C. §103(a)

Claims 8, 9 and 10 have been canceled. New Claims 18 and 19 correspond to canceled Claims 8 and 9, respectively, and presumably stand rejected under 35 USC §103(a) as being unpatentable over Howell (US Patent No. 1,243,605) in view of Miller (4,124,016) or Stich (DE 40 10 203) in view of Miller (US Patent No. (4,124,016), and further in view of Parks (US Patent No. (5,129,384).

New Claims 20 and 21 corresponds to canceled Claim 10, and presumably stands rejected under 35 USC §103(a) as being unpatentable over Howell (US Patent No. 1,243,605) in view of Miller (4,124,016) or Stich (DE 40 10 203) in view of Miller (US Patent No. (4,124,016).

These rejections are respectfully traversed.

Claims 18, 19 and 20-21 are dependent upon independent Claim 11. Under

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the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 11 is unobvious in view of the prior art of record, as such Claims 18, 19 and 20 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 18, 19 and 20 based upon 35 U.S.C. §103(a).

It is respectfully submitted that Claims 11-21, the pending claims, are now in condition for allowance and such action is respectfully requested. Applicant's Agent respectfully requests direct telephone communication from the Examiner with a view toward any further action deemed necessary to place the application in final condition for allowance.

10/31/2005
Date of Signature

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